

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is at BUCHALTER NEMER, A Professional Corporation, 1000 Wilshire Boulevard, Suite 1500, Los Angeles, California 90017-2457.

On the date set forth below, I served the foregoing document described as:

**PLAINTIFF ARGENT MORTGAGE COMPANY'S RULE 26(a)(1)
INITIAL DISCLOSURES**

on all other parties and/or their attorney(s) of record to this action by placing a true copy thereof in a sealed envelope as follows:

Larry S. Greenfield, Esq.
THE LAW OFFICES OF LARRY S. GREENFIELD
433 N. Camden Drive, Suite 400
Beverly Hills, CA 90210-4408

John Pelosi, Esq.
PELOSI WOLF EFFRON & SPATES LLP
233 Broadway, 22nd Floor
New York, N.Y. 10279

Lisa I. Carteen, Esq.
BAKER & HOSTETTLER LLP
333 S. Grand Ave., Suite 1800
Los Angeles, CA 90071-1523

Rosanne Yang, Esq.
BAKER HOSTETTLER
Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260

☒ **BY MAIL** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. The address(es) shown above is(are) the same as shown on the envelope. The envelope was placed for deposit in the United States Postal Service at Buchalter Nemer in Los Angeles, California on January 22, 2007. The envelope was sealed and placed for collection and mailing with first-class prepaid postage on this date following ordinary business practices.

1 ☒ I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct to the best of my knowledge. Executed on January 22, 2007, at Los
3 Angeles, California.

4 ☒ I declare that I am employed in the office of a member of the bar of this court at whose
5 direction the service was made. Executed on January 22, 2007, at Los Angeles, California.

6
7 Bronwen McGarva

Bronwen McGarva
(Signature)

Exhibit "D"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Priority
Send ☒
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JS-5/JS-6 ☐
JS-2/JS-3 ☐
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CIVIL MINUTES - GENERAL

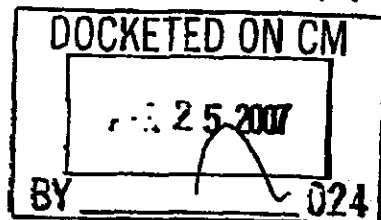
Case No. SACV06-00749 CJC(RNBx)Date April 23, 2007Title Argent Mortgage Company, et al v. Edward McCainPresent: The Honorable CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGEMichelle UricMaria DellancveDeputy ClerkCourt Reporter / RecorderTape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Richard P. OrmondLarry S. GreenfieldProceedings: Scheduling Conference

Scheduling Conference held. Court and counsel confer. Court sets pretrial conference on July 14, 2008 at 3:30 p.m. and jury trial on July 22, 2008 at 9:00 a.m. Court orders counsel to submit a proposed stipulation with case management dates and settlement procedure request within thirty days from today's date. Court further orders counsel to appear before the Magistrate Judge for possible resolution of case.



Initials of Preparer

mu

13

24

From: Name: United States District Court
312 North Spring Street
Los Angeles, CA 90012
Voice Phone: (213) 894-5474

To: Name: David Pasternak
Company:
1875 Century Park E, Suite 2200
City/State: Los Angeles, CA 90067-2523
Fax Number: 310-553-1540

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



Automated Document Delivery Service

Notice pursuant to Rule 77(d) FRCiv.P

The attached copy is hereby served upon you pursuant to Federal Rule of Civil Procedure 77(d).

Fax Notes:

Case 8:06-CV-00749 : ARGENT MORTGAGE COMPANY ET AL V. EDWARD MCCAIN

Pursuant to General Order 06-07, Section F, the following documents shall be submitted in the traditional manner: Pen Registers, Search Warrants, Seizure Warrants, Wire Taps, Bond Related Documents, Under Seal and In-Camera Documents, and All Charging Documents (Complaints, Informations, Indictments, and Superseding Charging Documents). All other documents filed in cases unassigned to a judge shall be filed electronically with a copy e-mailed to the criminal intake mailbox for the appropriate division. The proper e-mail address for each division is as follows:

Western Division: CrimIntakeCourtDocs-LA@cacd.uscourts.gov

Southern Division: CrimIntakeCourtDocs-SA@cacd.uscourts.gov

Eastern Division: CrimIntakeCourtDocs-RS@cacd.uscourts.gov

For additional information and assistance, please refer to the CM/ECF page on the Court website at www.cacd.uscourts.gov.

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If you received this document in error because the attorney with whom this document is directed is no longer the attorney on the case, a Notice of Change of Attorney Information, form G-6, must be filed. If there are other cases which you've received documents for which you are no longer the attorney, separate notices must be filed for each case. Failure to do so will result in the continued sending of documents to you. Form G-6 is available on the court's website at www.cacd.uscourts.gov or at the Clerk's Office.

Date and time of transmission: Wednesday, April 25, 2007 3:47:36 PM
Number of pages including this cover sheet: 02

Exhibit "E"

1 BUCHALTER NEMER
A Professional Corporation
2 MICHAEL L. WACHTELL (SBN: 47218)
RICHARD P. ORMOND (SBN: 207442)
3 1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457
4 Telephone: (213) 891-0700
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5

Attorneys for Plaintiff and Counterclaim Defendant
6 ARGENT MORTGAGE COMPANY, LLC

7 PASTERNAK & PASTERNAK
DAVID J. PASTERNAK (SBN: 72201)
8 1875 Century Park East, Suite 2200
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9 Telephone: (310) 553-1500
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10

Attorneys for Plaintiff and Counterclaim Defendant
11 TEAM RAHAL, INC.; and Counterclaim Defendant
Rahal Letterman Racing, Inc.
12

PELOSI WOLF EFFRON AND SPATES LLP
13 JOHN PELOSI (*Admitted Pro Hac Vice*)
233 Broadway, 22nd floor
14 New York, NY 10279
Telephone: (212) 334-3599
15 Facsimile: (212) 571-9149

Attorneys for Defendant/Counterclaimant
16 EDWARD MCCAIN
17

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

20 ARGENT MORTGAGE
COMPANY, LLC, a California
21 limited liability company; and
TEAM RAHAL, INC., an Ohio
22 corporation,

23 Plaintiff,

24 vs.

25 EDWARD MCCAIN, an individual,
26 Defendant.

27 AND RELATED
28 COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)

Judge: The Hon. Cormac J. Carney

**[PROPOSED] STIPULATED CASE
MANAGEMENT DATES AND
SETTLEMENT PROCEDURES**

Pre-Trial Conf. Date: July 14, 2008
Trial Date: July 22, 2008

Attorneys for Plaintiff and Counterclaim Defendant Argent Mortgage Company, LLC, Plaintiff and Counterclaim Defendant Team Rahal, Inc., and Defendant and Counterclaimant Edward McCain submit this Stipulated Case Management Statement:

Case Management Dates		
	Date	Event
1.	February 1, 2007	Written discovery began.
2.	April 1, 2007	Party and third party depositions begin.
3.	August 31, 2007	Cut-off to add additional parties/claims.
4.	May 30, 2008	Non-expert discovery cut-off.
5.	May 30, 2008	Discovery motion cut-off (filing) date.
6.	May 30, 2008	Dispositive motion cut-off (filing) date.
7.	June 4, 2008	Last day for meeting of counsel before Pretrial Conference to discuss items required by L.R. 16.2.
8.	June 10, 2008	Initial expert reports due.
9.	June 20, 2008	Rebuttal expert reports due.
10.	June 23, 2008	Last day to file and serve (1) memorandum of contentions of fact and law; (2) witness lists; and (3) joint exhibit lists.
11.	July 3, 2008	Last day for plaintiff to lodge Final Pretrial Conference Order.
12.	July 14, 2008, at 3:30 p.m.	Pretrial conference.
13.	July 22, 2008, at 9:00 a.m.	Jury trial begins (3-week estimated length).

Settlement Procedures


The parties have agreed to participate in private mediation that will be completed before December 31, 2007.

Further, on April 23, 2007, the Court ordered the parties to mediate before Magistrate Judge Robert N. Block. The parties will schedule and attend a settlement hearing with Magistrate Judge Block on or before May 30, 2008.

Respectfully submitted,

DATED: May 22, 2007

BUCHALTER NEMER
A Professional Corporation

By: 
RICHARD P. ORMOND
Attorneys for Plaintiff and Counterclaim
Defendant Argent Mortgage Company, LLC

DATED: May __, 2007

PASTERNAK & PASTERNAK

By: _____
DAVID J. PASTERNAK
Attorneys for Plaintiff and Counterclaim
Defendant Team Rahal, Inc.

DATED: May __, 2007

PELOSI WOLF EFFRON & SPATES LLP

By: _____
JOHN PELOSI
Attorneys for Defendant and
Counterclaim Plaintiff Edward McCain

Settlement Procedures

The parties have agreed to participate in private mediation that will be completed before December 31, 2007.

Further, on April 23, 2007, the Court ordered the parties to mediate before Magistrate Judge Robert N. Block. The parties will schedule and attend a settlement hearing with Magistrate Judge Block on or before May 30, 2008.

Respectfully submitted,

DATED: May __, 2007

BUCHALTER NEMER
A Professional Corporation

By: RICHARD P. ORMOND
Attorneys for Plaintiff and Counterclaim
Defendant Argent Mortgage Company, LLC

DATED: May 22, 2007

PASTERNAK, PASTERNAK & PATTON,
A LAW CORPORATION

By: DAVID J. PASTERNAK
Attorneys for Plaintiff and Counterclaim
Defendant Team Rahal, Inc.; and
Counterclaim Defendant Rahal
Letterman Racing, Inc.

DATED: May 22, 2007

PELOSI WOLF EEFRON & SPATES LLP

By: JOHN PELOSI
Attorneys for Defendant and
Counterclaim Plaintiff Edward McCain

PROOF OF SERVICE

ARGENT MORTGAGE COMPANY, LLC, etc., et al.
v. EDWARD McCain, etc.
USDC Case No. SACV0406-749 CJC (RNBx)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is at BUCHALTER NEMER, A Professional Corporation, 18400 Von Karman Avenue, Suite 800, Irvine, CA 92612-0514

On May 22, 2007, I served the foregoing document described as:

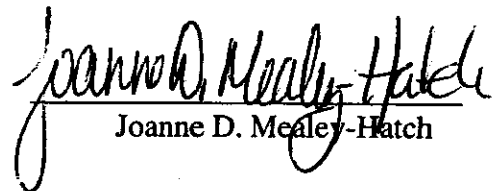
[PROPOSED] STIPULATED CASE MANAGEMENT DATES AND SETTLEMENT PROCEDURES

on all other parties and/or their attorney(s) of record to this action by placing a true copy thereof in a sealed envelope as follows:

See Attached Service List

☒ **BY MAIL** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. The address(es) shown above is(are) the same as shown on the envelope. The envelope was placed for deposit in the United States Postal Service at Buchalter Nemer in Irvine, California on May 22, 2007. The envelope was sealed and placed for collection and mailing with first-class prepaid postage on this date following ordinary business practices.

☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on May 22, 2007, at Irvine, California.


Joanne D. Mealey-Hatch

SERVICE LIST

ARGENT MORTGAGE COMPANY, LLC, etc., et al.
v. EDWARD McCain, etc.
USDC Case No. SACV0406-749 CJC (RNBx)

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 EDWARD McCain

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 EDWARD McCain

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 Email: djp@paslaw.com and
jwp@paslaw.com

Attorneys for Plaintiff and Counter-Claim
 Defendant, TEAM RAHAL, INC. and Counter-
 Claim Defendant RAHAL LETTERMAN
 RACING, INC.

And

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Attorneys for Plaintiff and Counter-Claim
 Defendant, TEAM RAHAL, INC. and Counter-
 Claim Defendant RAHAL LETTERMAN
 RACING, INC.

Exhibit "F"

1 PELOSI WOLF EFFRON & SPATES LLP
 2 JOHN PELOSI (*Pro Hac Vice Application*)
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 Facsimile: (212) 571-9149
 Email jpelosi@pwes.com
 Attorneys for Defendant/Counterclaim Plaintiff
 EDWARD MCCAIN

6 UNITED STATES DISTRICT COURT

7 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

8 ARGENT MORTGAGE COMPANY,
 LLC, a California limited liability
 9 company; and TEAM RAHAL, INC., an
 Ohio Corporation,

10 Plaintiffs,

12 v.

13 EDWARD McCain, an individual,
 14 Defendant.

15 AND RELATED COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)

PLAINTIFF'S ANSWER TO
 DEFENDANT'S FIRST SET OF
 REQUESTS FOR ADMISSIONS

Judge: Hon. Cormac J. Carney
 Crtrm: 9B

16 ANSWERS TO REQUESTS FOR ADMISSIONS

17 ANSWER TO REQUEST FOR ADMISSION NO. 1:

18 Admit.

19 ANSWER TO REQUEST FOR ADMISSION NO. 2:

20 Admit.

21 ANSWER TO REQUEST FOR ADMISSION NO. 3:

22 Admit that Borchetta signed an agreement to license images to Argent, but deny being aware
 23 of any known agency relationship between Borchetta and Argent.

24 ANSWER TO REQUEST FOR ADMISSION NO. 4:

25 Admit that Borchetta signed an agreement to license images to Argent, but deny being aware
 26 of any known agency relationship between Borchetta and Argent.

27 ANSWER TO REQUEST FOR ADMISSION NO. 5:

28 Deny, but admit that Borchetta was acting as an intermediary with Argent.

PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF ADMISSIONS

Exhibit F Page 77

1 ANSWER TO REQUEST FOR ADMISSION NO. 6:

2 Deny, but admit to entering into an agreement with Borchetta and not being aware of his
3 official capacity with respect to Argent.

4 ANSWER TO REQUEST FOR ADMISSION NO. 7:

5 Deny, but admit that I entered into an agreement with Borchetta and not being aware of his
6 official capacity with respect to Argent.

7 ANSWER TO REQUEST FOR ADMISSION NO. 8:

8 Deny.

9 ANSWER TO REQUEST FOR ADMISSION NO. 9:

10 Deny.

11 ANSWER TO REQUEST FOR ADMISSION NO. 10:

12 Deny, but admit that license agreement was entered into with Borchetta.

13 ANSWER TO REQUEST FOR ADMISSION NO. 11:

14 Deny, but admit that license agreement was entered into with Borchetta.

15 ANSWER TO REQUEST FOR ADMISSION NO. 12:

16 Deny.

17 ANSWER TO REQUEST FOR ADMISSION NO. 13:

18 Deny.

19 ANSWER TO REQUEST FOR ADMISSION NO. 14:

20 Deny.

21 ANSWER TO REQUEST FOR ADMISSION NO. 15:

22 Deny.

23 ANSWER TO REQUEST FOR ADMISSION NO. 16:

24 Deny.

25 ANSWER TO REQUEST FOR ADMISSION NO. 17:

26 Deny.

27 ANSWER TO REQUEST FOR ADMISSION NO. 18:

28 Deny.

1 ANSWER TO REQUEST FOR ADMISSION NO. 19:

2 Deny.

3 ANSWER TO REQUEST FOR ADMISSION NO. 20:

4 Deny.

5 ANSWER TO REQUEST FOR ADMISSION NO. 21:

6 Deny.

7 ANSWER TO REQUEST FOR ADMISSION NO 22:

8 Deny.

9 ANSWER TO REQUEST FOR ADMISSION NO. 23:

10 Deny.

11 ANSWER TO REQUEST FOR ADMISSION NO. 24:

12 Deny, in so as much as the admission requested is unclear.

13 ANSWER TO REQUEST FOR ADMISSION NO. 25:

14 Deny, in so much as photographers may use images in editorial contexts.

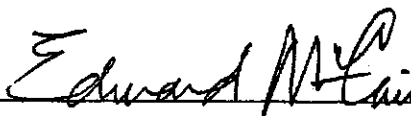
15 ANSWER TO REQUEST FOR ADMISSION NO. 26:

16 Deny, in so as much as the admission requested is unclear.

17 ANSWER TO REQUEST FOR ADMISSION NO. 27:

18 Deny, in so much as photographers may use images in editorial contexts.

19
20 DATED: MAY 25, 2007

21 

22 EDWARD McCain

23
24 PELOSI WOLF EFFRON & SPATES LLP

25
26 By: 

27 JOHN PELOSI, ESQ.

28 Attorney for Defendant/Counterclaim Plaintiff
Edward McCain

3
PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF ADMISSIONS

PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the mail courier service, Federal Express, to the addressee on this date:

Richard P. Ormond, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

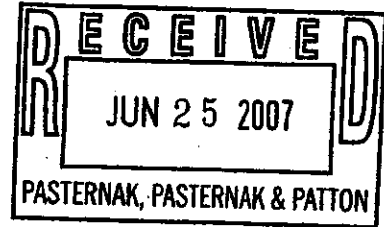
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 25, 2007, at New York, New York.



Angelo DiStefano

Exhibit "G"



1 PELOSI WOLF EFFRON & SPATES LLP
2 JOHN PELOSI (*Pro Hac Vice Application*)
3 233 Broadway, 22nd Floor
4 New York, NY 10279
5 Telephone: (212) 334-3599
Facsimile: (212) 571-9149
Email: jpelosi@pwes.com
Attorneys for Defendant/Counterclaim Plaintiff
EDWARD MCCAIN

6 UNITED STATES DISTRICT COURT

7 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

8 ARGENT MORTGAGE COMPANY,
9 LLC, a California limited liability
10 company; and TEAM RAHAL, INC.,
11 an Ohio Corporation,

12 Plaintiffs,

13 v.

14 EDWARD McCain, an individual,
15 Defendant.

16 AND RELATED COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)

DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES

Judge: Hon. Cormac J. Carney
Crtrm: 9B

17 Pursuant to Federal Rule of Civil Procedure 33 and Local Rules, Defendant and
18 Counterclaim Plaintiff Edward McCain makes the following Answers, and his
19 counsel makes the following Objections, to Plaintiff and Counterclaim Defendant's
20 First Set of Interrogatories dated April 26, 2007.

21 **GENERAL OBJECTIONS**

22 McCain, through his counsel, generally objects to the Interrogatories as follows:

- 23 1. McCain objects to the Interrogatories to the extent that they are overbroad, unduly
24 burdensome and not reasonably calculated to lead to the discovery of admissible
25 evidence.
26 2. McCain objects to the Interrogatories to the extent that they seek information not
27 currently in his possession, custody or control.
28 3. McCain objects to the Interrogatories to the extent that they seek information
protected by the attorney-client privilege, the work product doctrine, or other

1 privilege or immunity recognized by law. Any inadvertent or mistaken disclosure of
2 information protected by the attorney-client privilege, the work product doctrine, or
3 other privilege or immunity recognized by law shall not constitute a waiver of such
4 privilege or immunity.

5 4. In providing these Answers and Objections, McCain does not waive, but rather
6 reserves:

7 (i) all objections as to competency, relevancy, materiality and admissibility
8 of the Interrogatories, these Answers and Objections, and the subject matter
9 thereof;

10 (ii) all objections as to vagueness, ambiguity and undue burden;

11 (iii) all rights to object on any ground to the use of any part of these
12 Answers and Objections and the subject matter thereof in any subsequent
13 proceeding, including the trial of this action; and

14 (iv) all rights to object on any ground to any requests for further Answers to
15 these or any other Interrogatories.

16 5. McCain reserves the right to supplement or amend these Answers and Objections
17 at any time.

18 **ANSWERS AND SPECIFIC OBJECTIONS**

19 Subject to and without waiving any of the foregoing General Objections, McCain
20 answers, and through his counsel specifically objects to, the Interrogatories as
21 follows:

22 **ANSWER TO INTERROGATORY NO. 1:**

23 The available facts that support the contention are as follows: Argent reproduced the
24 photographs pursuant to written license agreements which clearly stated the rights
25 granted and the limitations of those rights. Borchetta has indicated that he provided
26 Argent with original transparencies of Photographs and also provided Argent with
27 the Photographs in electronic format for Argent's review and selection for use
28 pursuant to the license agreements. Upon information and belief, the license

1 agreements were reviewed and acknowledged by Argent. On January 19, 2005,
2 Rochelle Arther, Advertising Coordinator of Marketing for Argent sent an email to
3 Borchetta specifically asking: "*Are there any similar photos of Danica (to that of*
4 *McCain's Photographs) that we (Argent) do not have to pay licensing fees on that we*
5 *own out right?*" Borchetta replied that same day to Ms. Arther's email stating: "*Not*
6 *that I possess.*" (See documents MC0000195 and MC0000196.) Despite this clear
7 indication, Argent and other Counterclaim Defendants proceeded to use the
8 photographs without permission in violation of copyrights. It is believed that Argent
9 used electronic files to reproduce photographs in various media.

10
11 **ANSWER TO INTERROGATORY NO. 2:**

12 McCain specifically objects to this Interrogatory to the extent that it seeks
13 information not currently in his possession, custody or control. Subject to and
14 without waiving the foregoing Specific Objection, it is upon information and belief
15 that Argent and other Counterclaim Defendants entered a sponsorship/marketing
16 arrangement. It is clear that Danica Patrick was featured in the promotional and
17 advertising campaign that resulted from this arrangement. The specifics of the
18 promotional and advertising campaign will be determined through discovery. There
19 are photographs of Danica Patrick wearing Argent logos. Argent logos also appeared
20 on Danica Patrick's Indy race car and on her racing suit. Presumably, the exposure
21 resulting for Argent from Danica Patrick's popularity resulted in promotional benefits
22 for Argent.

23 **ANSWER TO INTERROGATORY NO. 3:**

24 During pre-litigation factual exchanges, Counterclaim Defendants admitted to using
25 the Photographs. Counterclaim Plaintiff has provided a detailed statement of uses as
26 set forth in letter dated June 27, 2006, a copy of which has been provided in response
27 to the document request in this matter. (See documents MC0000101 through
28

1 MC0000112.) Additional support for the claims shall be ascertained through
2 discovery.

3 **ANSWER TO INTERROGATORY NO. 4:**

4 McCain specifically objects to this Interrogatory to the extent that it seeks
5 information not currently in his possession, custody or control . Subject to and
6 without waiving the foregoing Specific Objection, in response to cease and desist
7 letters to the various media outlets, each party indicated the Photographs were
8 provided to them by Counterclaim Defendants. (See documents MC0000116 and
9 MC0000134.) These various media outlets also indicated that Counterclaim
10 Defendants granted them permission to reproduce the photographs.

11 **ANSWER TO INTERROGATORY NO. 5:**

12 McCain specifically objects to this Interrogatory to the extent that it seeks
13 information not currently in his possession, custody or control . Subject to and
14 without waiving the foregoing Specific Objection, McCain was able to secure
15 "screen-captures" of a substantial number of third party websites embodying the
16 Photographs. These third party websites includes those listed on the schedule
17 attached to letter dated June 27, 2006. (See documents MC0000105 through
18 MC0000112.) After August 2005, uses of the Photographs on third party websites
19 became too prevalent for Plaintiff to record.

20 **ANSWER TO INTERROGATORY NO. 6:**

21 No permission was granted for any uses of photographs other than the specific and
22 limited uses set forth in the licenses dated November 18, 2002 and January 21, 2005.
23 (See documents MC0000002 through MC0000008.)

24 **ANSWER TO INTERROGATORY NO. 7:**

25 See response to Interrogatory No. 1 above. Additional evidence may be ascertained
26 through discovery.

27 //

28 //

1 **ANSWER TO INTERROGATORY NO 8:**

2 See response to Interrogatory No. 3 above. Additional evidence may be ascertained
3 through discovery.

4 **ANSWER TO INTERROGATORY NO 9:**

5 Counterclaim Plaintiff was engaged to take photographs of Danica Patrick at the
6 request of Argent. All of the photographs resulting from the photo shoot were
7 registered with the Copyright Office. A registration for the photographs was duly
8 issued under # VAU-564-275. The license agreements for the use of the photographs
9 did not convey or assign copyrights to Argent or the other Counterclaim Defendants.
10 Counterclaim Plaintiff has not assigned the copyrights to any other person or entity.
11 A copy of the copyright registration has been provided to Counterclaim Defendants.

12 **ANSWER TO INTERROGATORY NO. 10:**

13 See response to Interrogatory No. 3 above. Argent was also made aware of these
14 facts in a letter dated August 23, 2005. (See documents MC0000060 through
15 MC0000088.) Additional evidence may be ascertained through discovery.

16 **ANSWER TO INTERROGATORY NO. 11:**

17 See response to Interrogatory No. 1 above. Additional evidence may be ascertained
18 through discovery.

19 **ANSWER TO INTERROGATORY NO. 12:**

20 See response to Interrogatory No. 1 above. Additional evidence may be ascertained
21 through discovery.

22 **ANSWER TO INTERROGATORY NO. 13:**

23 Counterclaim Plaintiff did not receive compensation for any of the unauthorized uses,
24 nor did he receive credit as the photographer of the photographs used in a major
25 promotional and advertising campaign launched by Counterclaim Defendants, which
26 included use of the Photographs in major publications.

27 **ANSWER TO INTERROGATORY NO. 14:**

28 Relevant copyright law allows for the recovery sought.

1 **ANSWER TO INTERROGATORY NO. 15:**

2 See response to Interrogatory No. 14 above.

3 **ANSWER TO INTERROGATORY NO. 16:**

4 McCain specifically objects to this Interrogatory to the extent that it seeks
5 information not currently in his possession, custody or control . Subject to and
6 without waiving the foregoing Specific Objection, Counterclaim Plaintiff believes
7 that Counterclaim Defendants generated profits significantly in excess of \$1,000,000
8 from the use of the photographs. This information is in Counterclaim Defendant's
9 possession. Further evidence substantiating the claims shall be ascertained in
10 discovery.

11 **ANSWER TO INTERROGATORY NO. 17:**

12 See response to Interrogatory No. 14 above, except that the statutory damages
13 Counterclaimant is entitled is \$150,000 per violation.

14 **ANSWER TO INTERROGATORY NO. 18:**

15 See responses to Interrogatories No. 2 and No. 3 above. Additional facts shall be
16 ascertained through discovery.

17 **ANSWER TO INTERROGATORY NO. 19:**

18 See response to Interrogatory No. 1 above.

19 **ANSWER TO INTERROGATORY NO. 20:**

20 See response to Interrogatory No. 4 above.

21 **ANSWER TO INTERROGATORY NO. 21:**

22 See response to Interrogatory No. 13 above. Furthermore, the reproduction of the
23 photographs was undertaken without giving Counterclaim Plaintiff credit. Failure to
24 give credit is recognized by the American Society of Magazine Photographers as a
25 per se violation of photographer's rights since the lack of credit may result in lost
26 future income. A standard loss of \$3,000 is recognized in the industry for each
27 instance credit is not provided. Counterclaim Defendants did not compensate
28 Counterclaim Plaintiff for any of the unauthorized uses.

1 **ANSWER TO INTERROGATORY NO 22:**

2 See responses to Interrogatories No. 17 and No. 21.

3 **ANSWER TO INTERROGATORY NO. 23:**

4 Mark Borchetta
5 15260 Ventura Blvd.,
6 Sherman Oaks, CA 91403
7 T: (818) 990-3239

8 United States Copyright Office
9 101 Independence Ave., S.E.
10 Washington, D.C. 20559-6000
11 T: (202) 707-5959

12 People Magazine
13 Time & Life Building
14 Rockefeller Center
15 New York, NY 10020

16 McCain granted a limited license to People in November of 2005 for use of one of
17 the Photographs in People Magazine. This license was granted to People after People
18 had been informed by McCain in June of 2005 that People's previous print and
19 online uses of the Photographs were unauthorized and in violation of McCain's
20 copyrights.

21 **ANSWER TO INTERROGATORY NO. 24:**

22 McCain specifically objects to this Interrogatory to the extent that it seeks
23 information not currently in his possession, custody or control . McCain further
24 objects to this Interrogatory to the extent that it is overbroad, unduly burdensome and
25 not reasonably calculated to lead to the discovery of admissible evidence. Subject to
26 and without waiving the foregoing Specific Objections, the basis for calculation of
27 damages is based upon either statutory damages afforded by US Copyright law,
28 Argents profits in connection with the unauthorized use of photographs, and damages
imposed by the Court in light of the willful nature of the infringements. Failure to

1 provide credit to McCain also has caused damage in the amount of \$3,000 per use
2 without credit.

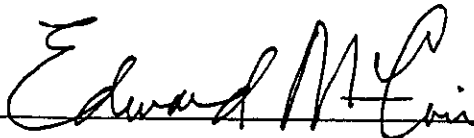
3 **ANSWER TO INTERROGATORY NO. 25:**

4 Authorized license of the images for editorial purposes and limited edition prints sales
5 as art.

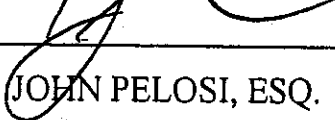
6
7 DATED: June 19, 2007
8

9 **DECLARATION**

10 Edward McCain declares under penalty of perjury that he is the Defendant and
11 Counterclaim Plaintiff in this action, that he has read the foregoing Answers to
12 Plaintiff's First Set of Interrogatories dated April 26, 2007, and that they are true to
13 his own knowledge, except as to matters stated upon information and belief, as to
14 which matters he believes to be true.

15
16
17 
18 EDWARD MCCAIN

19
20 PELOSI WOLF EFFERON & SPATES LLP

21
22 By: 
23 JOHN PELOSI, ESQ.
24 Attorney for Defendant/Counterclaim Plaintiff
25 Edward McCain
26
27
28

PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the mail courier service, Federal Express, to the addressee on this date:

Richard P. Ormond, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

H. Ritchey Hollenbaugh, Esq.
Carlile, Patchen & Murphy LLP
366 East Broad Street
Columbus, OH 43215

David J. Pasternak, Esq.
Pasternak, Pasternak & Patton
1875 Century Park East, Suite 2200
Los Angeles, CA 90067-2523

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 20, 2007 at New York, New York.

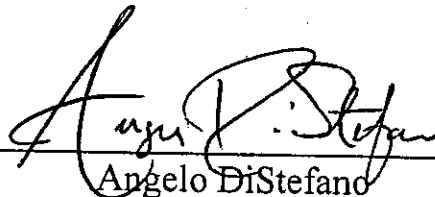
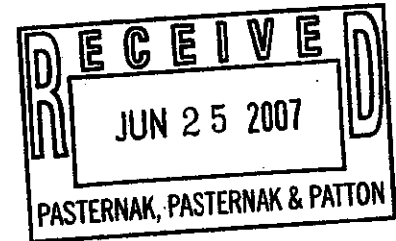

Angelo DiStefano

Exhibit "H"



1 PELOSI WOLF EFFRON & SPATES LLP
JOHN PELOSI (*Pro Hac Vice Application*)
2 233 Broadway, 22nd Floor
New York, NY 10279
3 Telephone: (212) 334-3599
Facsimile: (212) 571-9149
4 Email: jpelosi@pwes.com
Attorneys for Defendant/Counterclaim Plaintiff
5 EDWARD MCCAIN

6 UNITED STATES DISTRICT COURT

7 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

8 ARGENT MORTGAGE COMPANY,
LLC, a California limited liability
9 company; and TEAM RAHAL, INC.,
an Ohio Corporation,

10 Plaintiffs,

11 v.

12 EDWARD McCain, an individual,

13 Defendant.

14 AND RELATED COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)

DEFENDANT'S RESPONSES TO
PLAINTIFF'S FIRST SET OF
REQUESTS FOR THE
PRODUCTION OF DOCUMENTS

Judge: Hon. Cormac J. Carney
Crtrm: 9B

15 Pursuant to Federal Rule of Civil Procedure 34, Defendant and Counterclaim
16 Plaintiff Edward McCain, through his counsel makes the following Responses and
17 Objections, to Plaintiff and Counterclaim Defendant's First Set of Requests for the
18 Production of Documents dated April 26, 2007.

19 GENERAL OBJECTIONS

20 McCain, through his counsel, generally objects to the Requests as follows:

- 21 1. McCain objects to the Requests to the extent that they are overbroad, unduly
22 burdensome and not reasonably calculated to lead to the discovery of admissible
23 evidence.
- 24 2. McCain objects to the Requests to the extent that they seek information not
25 currently in his possession, custody or control.
- 26 3. McCain objects to the Requests to the extent that they seek information protected
27 by the attorney-client privilege, the work product doctrine, or other privilege or
28

Exhibit 11

Page 90

1 immunity recognized by law. Any inadvertent or mistaken disclosure of information
 2 protected by the attorney-client privilege, the work product doctrine, or other
 3 privilege or immunity recognized by law shall not constitute a waiver of such
 4 privilege or immunity.

5 4. In providing these Responses and Objections, McCain does not waive, but rather
 6 reserves:

7 (i) all objections as to competency, relevancy, materiality and admissibility
 8 of the Requests, these Responses and Objections, and the subject matter
 9 thereof;

10 (ii) all objections as to vagueness, ambiguity and undue burden;

11 (iii) all rights to object on any ground to the use of any part of these
 12 Responses and Objections and the subject matter thereof in any subsequent
 13 proceeding, including the trial of this action; and

14 (iv) all rights to object on any ground to any requests for further Responses
 15 to these or any other Requests.

16 5. McCain reserves the right to supplement or amend these Responses and
 17 Objections at any time.

18 **ANSWERS AND SPECIFIC OBJECTIONS**

19 Subject to and without waiving any of the foregoing General Objections, McCain
 20 responds, and through his counsel specifically objects to, the Requests as follows:

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

22 To the extent that documents responsive to this request exist, all known and existing
 23 responsive documents in Defendant's possession have been produced.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

25 To the extent that documents responsive to this request exist, all known and existing
 26 responsive documents in Defendant's possession have been produced.

27 //

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

5 To the extent that documents responsive to this request exist, all known and existing
6 responsive documents in Defendant's possession have been produced.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

8 To the extent that documents responsive to this request exist, all known and existing
9 responsive documents in Defendant's possession have been produced.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

11 To the extent that documents responsive to this request exist, all known and existing
12 responsive documents in Defendant's possession have been produced.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

14 To the extent that documents responsive to this request exist, all known and existing
15 responsive documents in Defendant's possession have been produced.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

17 To the extent that documents responsive to this request exist, all known and existing
18 responsive documents in Defendant's possession have been produced.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

20 To the extent that documents responsive to this request exist, all known and existing
21 responsive documents in Defendant's possession have been produced.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

23 McCain is producing herewith copies of documents in his possession, custody or
24 control responsive to this Request that were not previously produced.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

26 To the extent that documents responsive to this request exist, all known and existing
27 responsive documents in Defendant's possession have been produced.

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

5 To the extent that documents responsive to this request exist, all known and existing
6 responsive documents in Defendant's possession have been produced.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

8 McCain is producing herewith copies of documents in his possession, custody or
9 control responsive to this Request that were not previously produced.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

11 McCain is producing herewith copies of documents in his possession, custody or
12 control responsive to this Request that were not previously produced.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

14 To the extent that documents responsive to this request exist, all known and existing
15 responsive documents in Defendant's possession have been produced.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

17 To the extent that documents responsive to this request exist, all known and existing
18 responsive documents in Defendant's possession have been produced.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

20 To the extent that documents responsive to this request exist, all known and existing
21 responsive documents in Defendant's possession have been produced.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

23 To the extent that documents responsive to this request exist, all known and existing
24 responsive documents in Defendant's possession have been produced.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

26 To the extent that documents responsive to this request exist, all known and existing
27 responsive documents in Defendant's possession have been produced.

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

5 McCain is producing herewith copies of documents in his possession, custody or
6 control responsive to this Request that were not previously produced.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

8 To the extent that documents responsive to this request exist, all known and existing
9 responsive documents in Defendant's possession have been produced.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

11 To the extent that documents responsive to this request exist, all known and existing
12 responsive documents in Defendant's possession have been produced.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

14 To the extent that documents responsive to this request exist, all known and existing
15 responsive documents in Defendant's possession have been produced.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

17 To the extent that documents responsive to this request exist, all known and existing
18 responsive documents in Defendant's possession have been produced.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

20 To the extent that documents responsive to this request exist, all known and existing
21 responsive documents in Defendant's possession have been produced.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28**

23 To the extent that documents responsive to this request exist, all known and existing
24 responsive documents in Defendant's possession have been produced.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29**

26 To the extent that documents responsive to this request exist, all known and existing
27 responsive documents in Defendant's possession have been produced.

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31**

5 To the extent that documents responsive to this request exist, all known and existing
6 responsive documents in Defendant's possession have been produced.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32**

8 To the extent that documents responsive to this request exist, all known and existing
9 responsive documents in Defendant's possession have been produced.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33**

11 To the extent that documents responsive to this request exist, all known and existing
12 responsive documents in Defendant's possession have been produced.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34**

14 McCain is producing herewith copies of documents in his possession, custody or
15 control responsive to this Request that were not previously produced.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35**

17 To the extent that documents responsive to this request exist, all known and existing
18 responsive documents in Defendant's possession have been produced.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36**

20 To the extent that documents responsive to this request exist, all known and existing
21 responsive documents in Defendant's possession have been produced.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37**

23 To the extent that documents responsive to this request exist, all known and existing
24 responsive documents in Defendant's possession have been produced.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38**

26 McCain is producing herewith copies of documents in his possession, custody or
27 control responsive to this Request that were not previously produced.

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40**

5 To the extent that documents responsive to this request exist, all known and existing
6 responsive documents in Defendant's possession have been produced.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41**

8 To the extent that documents responsive to this request exist, all known and existing
9 responsive documents in Defendant's possession have been produced.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42**

11 To the extent that documents responsive to this request exist, all known and existing
12 responsive documents in Defendant's possession have been produced.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43**

14 McCain specifically objects to this Request because it is vague, overbroad, unduly
15 burdensome and not reasonably calculated to lead to the discovery of admissible
16 evidence. Without waiving the foregoing Specific Objection, to the extent that
17 documents responsive to this request exist, all known and existing responsive
18 documents in Defendant's possession have been produced.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44**

20 McCain specifically objects to this Request because it does not seek documents
21 relevant to claims set forth in this action. Without waiving the foregoing Specific
22 Objection, to the extent that documents responsive to this request exist, all known
23 and existing responsive documents in Defendant's possession have been produced.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45**

25 To the extent that documents responsive to this request exist, all known and existing
26 responsive documents in Defendant's possession have been produced.

27 //

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47**

5 McCain specifically objects to this Request because it does not seek documents
6 relevant to claims set forth in this action. Without waiving the foregoing Specific
7 Objection, to the extent that documents responsive to this request exist, all known
8 and existing responsive documents in Defendant's possession have been produced.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 48**

10 To the extent that documents responsive to this request exist, all known and existing
11 responsive documents in Defendant's possession have been produced.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 49**

13 To the extent that documents responsive to this request exist, all known and existing
14 responsive documents in Defendant's possession have been produced.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 50**

16 McCain specifically objects to this Request because it does not seek documents
17 relevant to claims set forth in this action. Without waiving the foregoing Specific
18 Objection, to the extent that documents responsive to this request exist, all known
19 and existing responsive documents in Defendant's possession have been produced.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 51**

21 McCain specifically objects to this Request because it does not seek documents
22 relevant to claims set forth in this action. Without waiving the foregoing Specific
23 Objection, to the extent that documents responsive to this request exist, all known
24 and existing responsive documents in Defendant's possession have been produced.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 52**

26 To the extent that documents responsive to this request exist, all known and existing
27 responsive documents in Defendant's possession have been produced.

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 53**

2 McCain specifically objects to this Request because it is vague, overbroad, unduly
3 burdensome and not reasonably calculated to lead to the discovery of admissible
4 evidence. Without waiving the foregoing Specific Objection, to the extent that
5 documents responsive to this request exist, all known and existing responsive
6 documents in Defendant's possession have been produced.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54**

8 To the extent that documents responsive to this request exist, all known and existing
9 responsive documents in Defendant's possession have been produced.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55**

11 To the extent that documents responsive to this request exist, all known and existing
12 responsive documents in Defendant's possession have been produced.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 56**

14 McCain specifically objects to this Request because it does not seek documents
15 relevant to claims set forth in this action. Without waiving the foregoing Specific
16 Objection, to the extent that documents responsive to this request exist, all known
17 and existing responsive documents in Defendant's possession have been produced.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57**

19 To the extent that documents responsive to this request exist, all known and existing
20 responsive documents in Defendant's possession have been produced.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 58**

22 To the extent that documents responsive to this request exist, all known and existing
23 responsive documents in Defendant's possession have been produced.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59**

25 To the extent that documents responsive to this request exist, all known and existing
26 responsive documents in Defendant's possession have been produced.

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1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 60**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 61**

5 McCain has no documents in his possession, custody or control responsive to this
6 Request.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 62**

8 McCain has no documents in his possession, custody or control responsive to this
9 Request.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 63**

11 McCain has no documents in his possession, custody or control responsive to this
12 Request.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 64**

14 To the extent that documents responsive to this request exist, all known and existing
15 responsive documents in Defendant's possession have been produced.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 65**

17 To the extent that documents responsive to this request exist, all known and existing
18 responsive documents in Defendant's possession have been produced.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 66**

20 McCain specifically objects to this Request because it is vague, overbroad, unduly
21 burdensome and not reasonably calculated to lead to the discovery of admissible
22 evidence. Without waiving the foregoing Specific Objection, to the extent that
23 documents responsive to this request exist, all known and existing responsive
24 documents in Defendant's possession have been produced.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 67**

26 To the extent that documents responsive to this request exist, all known and existing
27 responsive documents in Defendant's possession have been produced.

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 68**

2 To the extent that documents responsive to this request exist, all known and existing
3 responsive documents in Defendant's possession have been produced.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 69**

5 McCain is producing herewith copies of documents in his possession, custody or
6 control responsive to this Request that were not previously produced.

7
8 DATED: JUNE 20, 2007.

9
10 PELOSI WOLF EFFRON & SPATES LLP

11
12 By:  _____

13 JOHN PELOSI, ESQ.

14 Attorney for Defendant/Counterclaim Plaintiff
15 Edward McCain
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PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR
THE PRODUCTION OF DOCUMENTS

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the mail or by the courier service, Federal Express, to the addressee on this date:


Richard P. Ormond, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

H. Ritchey Hollenbaugh, Esq.
Carlile, Patchen & Murphy LLP
366 East Broad Street
Columbus, OH 43215

David J. Pasternak, Esq.
Pasternak, Pasternak & Patton
1875 Century Park East, Suite 2200
Los Angeles, CA 90067-2523

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 20, 2007, at New York, New York.


Angelo DiStefano

**DOCUMENTS PRODUCED IN RESPONSE TO REQUEST FOR
PRODUCTION NO. 15**

----- Forwarded Message

>> From: <sysdeliv@fn3a.prod.fedex.com>, FedEx <donotreply@fedex.com>

>> Reply-To: FedEx <donotreply@fedex.com>

>> Date: Tue, 19 Nov 2002 11:47:34 -0600 (CST)

>> To: <edward@mccainphoto.com>

>> Subject: FedEx shipment 792136750269

>>

>> Our records indicate that the shipment sent from Edward McCain/McCain

>> Photography

>> to Mark Borchetta/The Creative Dept., LLC has been delivered.

>> The package was delivered on 11/19/2002 at 9:45 AM and signed for

>> or released by 11643648.

>>

>> The ship date of the shipment was 11/18/2002.

>>

>> The tracking number of this shipment was 792136750269.

>>

>> FedEx appreciates your business. For more information about FedEx services,

>> please visit our web site at <http://www.fedex.com>

>>

>> To track the status of this shipment online please use the following:

>> [http://www.fedex.com/cgi-](http://www.fedex.com/cgi-bin/tracking?tracknumbers=792136750269&action=track&language=english&cntry_code=us)

[bin/tracking?tracknumbers=792136750269&action=track&l](http://www.fedex.com/cgi-bin/tracking?tracknumbers=792136750269&action=track&language=english&cntry_code=us)

>> [language=english&cntry_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=792136750269&action=track&language=english&cntry_code=us)

>>

>> Disclaimer

>> -----

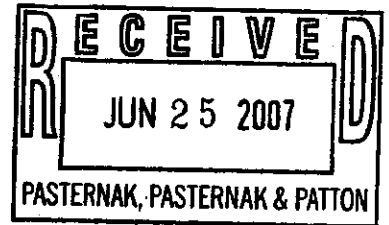
>> FedEx has not validated the authenticity of any email address.

>

> ----- End of Forwarded Message

>

>



DOCUMENTS PRODUCED IN RESPONSE TO REQUEST FOR
PRODUCTION NO. 14

THE LAW OFFICES
OF
ROBERT M. CAVALLO P.C.
545 MADISON AVENUE
NEW YORK, NEW YORK 10022

TEL. 212-753-2224
FAX. 212-753-7113

OF COUNSEL
DANIEL J. BELLIZIO
ADMITTED NY & NJ

June 8, 2005

Indy Men's Magazine
8500 Keystone Crossing
Indianapolis, IN 46240
ATTN: Legal Department

Re: Edward McCain & Danica Patrick

Dear Sirs,

This office represents the above named photographer in connection with the illegal use of his images of Danica Patrick.

On November 14-15, our client was hired by a marketing company to photograph Ms. Patrick for one of her sponsors. He subsequently registered the images with the Library of Congress, and obtained a copyright for same, bearing registration number VAU 564-275.

It has come to our client's attention that his image of Danica Patrick was published on the cover of the May 2005 edition of Indy Men's Magazine (a copy of that image is enclosed herein), as well as appeared on the magazine's website.

Our client did not grant Indy Men's Magazine a license to use this image. As such, you are put on notice that said use of Mr. McCain's photograph constitutes copyright infringement under Title 17 of the United States Code. Take notice that copyright violations carry a penalty ranging from \$35,000.00 to \$150,000.00 for each infringement.

Our client intends to take all steps necessary, including commencing litigation, to protect his interest in his copyrighted images.

Feel free to contact this office should you wish to discuss this matter.

Very truly yours,

Robert M. Cavallo

cc: Mr. Edward McCain

Exhibit H Page 105

Photography Invoice

TO: Donna Tsufura
People Magazine
1271 Sixth Ave Room 2958
New York, NY 10020
USA
(212) 522-2399

Date:11/21/05
Invoice No.:4387
Job N°:2995
Client Job N°:17818#Edward
P.O. N°:email
AD/Editor:D. Tsufura

Start Time: 3:30 PM	Start Date: 11/14/02	Due Date: 11/21/05
----------------------------	-----------------------------	---------------------------

Details: Stock photography: McCain Photography image #2995-02-006 Location still photography of driver Danica Patrick, full-length with race car tires on Firebird track.

NOTE: The rights granted herein are without prejudice regarding any claims for unauthorized use of the photo in the past by People. The license fee shall not be used as a basis for determining damages in the future, if any, in connection with the use of the photo as provided to People by Rahal Letterman Racing.

Location: Firebird Raceway

Rights/Usages:

One-Time, non-exclusive English language rights by Time, Inc., for editorial usage in People Magazine Yearbook 2006, in a print run of up to 800,000 for January 2006 issue for distribution in USA, to be published only in 1.25 pages in size and with inside placement. No promotional or electronic use rights are granted. Subject photograph(s) are copyrighted ©2002 Edward McCain/McCain Photography. All rights are reserved except those specifically granted by this invoice. Must photo credit: ©2002 Edward McCain. The rights granted herein are without prejudice regarding any claims for unauthorized use of the photo in the past by People. The license fee shall not be used as a basis for determining damages in the future, if any, in connection with the use of the photo as provided to People by Rahal Letterman Racing.

[illegible]

Payment is due upon receipt. Granting of right of usage is limited to that specified above and is contingent upon full payment and is subject to all terms and conditions on the reverse side pursuant to article 2, Uniform Commerical Code and the 1976 Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photographs resulting from this assignment. Additional usage requires negotiation of additional fees.

Itemized Costs:	\$750.00
Tax:	\$0.00
Total:	\$750.00
Deposit/Credit:	\$0.00
Balance Due:	\$750.00

Page 1 of 1

EIN: 86-0800408

McCain Photography, 211 S. Fourth Avenue, Tucson, AZ 85701-2103
(520) 623-1998 Fax: (520) 623-1190 edward@mccainphoto.com / www.mccainphoto.com

Exhibit

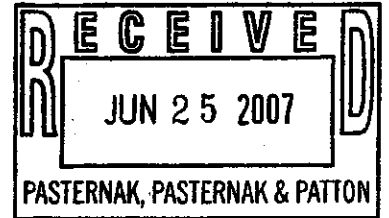
Page

106



Terms & Conditions

1. **DEFINITIONS:** This agreement is between the "Photographer" (author of the photographs), or Photographer's authorized "Representative" named on the face of this form, and "Client" (the commissioning party, and its agent). This Assignment will be the Photographer's interpretation rather than literal recreation of Client's concept(s) and/or layout(s). "Photograph(s)" means all photographic material furnished by Photographer hereunder, whether transparencies, negatives, prints or otherwise.
2. **ESTIMATED FEES, CHARGES AND EXPENSES:** All estimated fees, production charges and expenses apply only to the original layout, job description, reproduction rights licensed and Period of Use as specified on this form. Any changes are subject to amendment or separate agreement. Client and agent are jointly and severally responsible for payment of fees, charges and expenses.
3. **POSTPONEMENTS AND CANCELLATIONS:** If Client postpones or cancels the Assignment, Client will pay all incurred fees, charges and expenses. If postponed or canceled without Photographer's prior written consent two business days (48 hours) or more prior to shoot date, Client will also pay the following percentages of Photographer's fees (a) postponement, 25%; (b) cancellation, 50%. If postponed or canceled in less than two business days Client will pay 100% of Photographer's fee. A postponement is the rescheduling of the Assignment by the Client to a mutually agreeable date within 30 calendar days of the original shoot date.
4. **WEATHER DELAYS:** Client will pay 100% of Photographer's Weather Delay Fee per day for any delays caused by weather, plus all charges and expenses incurred.
5. **CLIENT APPROVAL:** Client is responsible for the presence of its authorized representative at the shoot to approve Photographers interpretation of the assignment. If no representative is present, Photographer's interpretation will be deemed acceptable. However if deemed unacceptable by Client, Photographer shall have right of first refusal, but not the obligation, to reshoot according to item #7.
6. **OVERTIME:** In the event that a shoot extends beyond eight consecutive hours Photographer may charge overtime for crew members at one-and-one-half their hourly rates.
7. **RESHOOTS:** Unless Photographer consents in writing otherwise, (a) Client will pay 100% of Photographer's fee, charges and expenses for any reshoot requested by Client. (b) If before being delivered to Client the film from the "shoot" has been lost or is unusable because of defect, damage, equipment malfunction, processing or other technical error, Photographer will reshoot without additional fee, provided Client advances and pays all charges and expenses for the reshoot and the initial shoot. (c) If Photographer charges for special reshoot insurance and collects for a loss, Client will not be charged for any portion of the reshoot covered by the insurance payment. A list of insurance exclusions will be provided upon request.
8. **INDEMNITY:** Client will indemnify and hold Photographer and Representative harmless from any and all claims, liabilities and damages, including reasonable attorney fees and court costs arising from (a) Client's use of Photographer's photos, including uses for which no release was requested in writing or arising out of any use of any photographs for which no release was furnished by Photographer, or any photographs which are altered by Client. (unless so furnished, no release exists) or for uses which exceed authority granted by talent or other release or by this agreement, and (b) Photographer's reliance on, or use of, any instruction or assurance, or material provided or approved by Client. Photographer's liability for all claims shall not exceed in any event the total amount paid under this invoice.
9. **REPRODUCTION RIGHTS:** Reproduction rights are conditioned on Photographer's receipt of payment in full and Client's proper use of the copyright notice. Except as otherwise specifically provided herein, all photographs and rights therein, including copyright, remain the sole and exclusive property of Photographer. Any additional uses require the prior written agreement of Photographer on terms to be negotiated. Unless otherwise stated on the face of this Agreement, duration of the License is one year from Agreement date and limited to use in the United States of America. Client may not sell, assign or otherwise transfer this License, or any rights or obligations under this License without Photographer's prior written consent.
10. **RETURN OF PHOTOGRAPHS:** Client agrees to: (a) assume all risk for all photographic material(s) delivered by Photographer from time of receipt by Client to time of receipt by Photographer. (b) return all photographs prepaid and fully insured, safe and undamaged, by bonded messenger air freight, or registered mail, within thirty (30) days after the first use thereof as provided herein, but in all events (whether published or unpublished) within 90 days after the date hereof. (c) assume full liability for its principals, employees, agents, affiliates, successors and assigns (including without limitation messengers and freelance researchers for any loss, damage, or misuse of the photographs. (d) supply Photographer with two free copies of each use of the photographs.
11. **LOSS OR DAMAGE:** If no "actual value" for liquidated damage(s) amount per photograph appears on the face of this form, or by attachment or by delivery memorandum, then liquidated damage(s) for loss or damage has been agreed upon between the parties to be \$1500 dollars per original transparency or negative. In the event of failure to return photographs per item #10, Photographer shall be entitled to immediate payment in full of above liquidated damages. Photographer and Client agree that said amount represents the fair and reasonable value of each item, and that Photographer would not sell all rights to such item for less than said amount.
12. **PAYMENT AND COLLECTION TERMS:** Invoices are payable upon receipt by client or its agents. Balances over 30 days are subject to a 1.5% per month late payment charge. Photographer will be entitled to collect any expenses, including reasonable attorney's fees and costs, required to collect any sums due or to enforce the terms of this Agreement.
13. **SALES TAX:** Unless Client or Agent supplies Photographer with a properly executed resale certificate Client must pay all applicable sales use or similar taxes, including any subsequent assessment made by tax authorities.
14. **MISCELLANEOUS:** Client may not assign or transfer this agreement or any rights granted hereunder. This agreement binds and inures to the benefit of Photographer, Client, Client's principals, employees, agents and affiliates, and their respective heirs, legal representatives, successors and assigns. Client and its principals, employees, agents and affiliates are jointly and severally liable for the performance of all payments and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties. However, the invoice may reflect, and Client is bound by, oral authorizations for fees or expenses which could not be confirmed in writing because of immediate proximity of shooting. This agreement incorporates by reference Article 2 of the Uniform Commercial Code, and the Copyright Act of 1976, as amended. Unless client or agent receives from Photographer a properly executed talent or property release(s) Client is responsible for obtaining the release(s). Any transfer of ownership of original materials must be in writing and signed by Photographer.
15. **DISPUTES:** Except as Provided in (16) below any dispute regarding this agreement shall be arbitrated in Tucson, Arizona under rules of the American Arbitration Association and the laws of Arizona. Judgment on the arbitration award may be entered in any court having jurisdiction. Any dispute involving \$1,500 or less may be submitted without arbitration to any court having jurisdiction thereof. Client shall pay all arbitration and court costs, reasonable legal fees, and expenses, and legal interest on any award or judgment in favor of Photographer.
16. **JURISDICTION:** Client hereby expressly consents to the jurisdiction of the Federal courts with respect to claims by Photographer under the Copyright Act of 1976, as amended.
17. **ESTIMATES:** All expense estimates are subject to normal trade variance of 15%.
18. **PHOTOGRAPHER'S ADDITIONS:**



DOCUMENTS PRODUCED IN RESPONSE TO REQUESTS FOR
PRODUCTION NOS. 10, 22, 34, & 38

Edward McCain

Mon, Jan 29, 2007 11:29 AM

Subject: Check is in the mail

Date: Wednesday, January 1, 2003 7:56 AM

From: Mark Borchetta <mark@bwaadvertising.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Check is in the mail

Hi Ed,

Happy New Year. I just received payment from the client for the Phoenix shoot. So I will be forwarding a check to you in tomorrow's mail.

Take care.

--

Mark Borchetta
Borchetta Wentworth & Associates
Phone 661/288-1155
Fax 661/288-1166
mark@bwaadvertising.com

Edward McCain

Mon, Jan 29, 2007 11:35 AM

Subject: Hey Ed

Date: Wednesday, January 19, 2005 2:25 PM

From: Mark Borchetta <mark@borchetta.com>

To: <edward@mccainphoto.com>

Conversation: Hey Ed

Call me as soon as you have a free minute.

Argent wants to use a Danica photo for SI and Maxim.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:36 AM

Subject: Re: Estimate for usage of Danica Patrick images

Date: Wednesday, January 19, 2005 5:00 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Estimate for usage of Danica Patrick images

I told them \$6,500 in case they wanted to negotiate. At this point I recommend staying firm at \$6,500. They have the money and they're very difficult to deal with.

--
Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: Edward McCain <edward@mccainphoto.com>

Date: Wed, 19 Jan 2005 16:09:35 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Estimate for usage of Danica Patrick images

Mark,

Just a note to confirm our phone conversation regarding usage of one image of Danica Patrick from our photo shoot in Phoenix.

This is for full-page advertising usage in Sports Illustrated and Maxim, one insertion each, inside magazine:

Sport Illustrated (3.3 million circ) - \$4350

Maxim (2.5 million circ) - \$3610

Subtotal = \$7960

25 percent discount for original client (Argent): \$1990

Total Usage Fee: \$5970

I would include a discount for additional future insertions if this makes any difference to Argent.

If this is a go, I will need to get a signed Usage Confirmation Agreement from the buyer before the image is released for publication. I can draw this up and fax it. Just let me know.

Nice to hear from you,

Edward

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

<http://www.mccainphoto.com>

Stock:

<http://www.photosofarizona.com>

"Life is an affirmative action program"

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Edward McCain

Mon, Jan 29, 2007 11:37 AM

Subject: FW: Urgent Danica photo
Date: Wednesday, January 19, 2005 5:54 PM
From: Mark Borchetta <mark@borchetta.com>
To: Edward McCain <edward@mccainphoto.com>
Conversation: Urgent Danica photo

Ed, this is he part of the ad I have seen.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

----- Forwarded Message

From: RArther@argentmortgage.com
Date: Wed, 19 Jan 2005 13:34:50 -0800
To: mark@borchetta.com, brian@borchetta.com
Cc: HMargarit@argentmortgage.com
Subject: Urgent Danica photo

Mark

Attached below is the image that I need. I need it in the following format:

8.5 x 11 scanned .tiff or .eps @ 300 dpi or higher. If it is not too big of a file to send in an email can you email to:

ahaffner@indyracing.com
jtuttle@indyracing.com
rarter@argentmortgage.com

If it is too big to send via email can you just post it on the below ftp site?

ftp://ftp-productions@ftp.brickyard.com <ftp://ftp-productions@ftp.brickyard.com/>
username - ftp-productions
password - indy500400f1

"Gish" folder
"Danica image" folder

Let me know if you have any questions.

Thank you

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614

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----- End of Forwarded Message



Edward McCain

Mon, Jan 29, 2007 11:39 AM

Subject: Re: Urgent Danica photo

Date: Thursday, January 20, 2005 10:14 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Urgent Danica photo

Sorry for the delay Ed.

\$6,500 for the use of one image for one insertion in SI and Maxim, same image unlimited B-to-B use for one year. Payment in full due now. Either we can invoice them and forward to you, or, preferably, you can invoice them and pay me. But either way.

Agreement also allows purchase of future images at \$500 each for unlimited B-to-B use for one year.

Let me know if you have questions.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: Edward McCain <edward@mccainphoto.com>

Date: Thu, 20 Jan 2005 13:47:36 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Re: Urgent Danica photo

Mark,

When you get a chance, could you please send me the deal points so I can draft a confirmation agreement for the usage of the Danica photo or photos? I want to be sure I get this right.

Thanks for your work on this.

Edward

On 1/19/05 5:54 PM, "Mark Borchetta" <mark@borchetta.com> wrote:

Ed, this is he part of the ad I have seen.

Edward McCain
Assignment & Stock Photography
Voice: (520) 623-1998 Fax: (520) 623-1190
mailto:edward@mccainphoto.com
Assignments:
<http://www.mccainphoto.com>
Stock:
<http://www.photosofarizona.com>
"Life is an affirmative action program"

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On 1/20/05 10:14 PM, "Mark Borchetta" <mark@borchetta.com> wrote:

Sorry for the delay Ed.

\$6,500 for the use of one image for one insertion in SI and Maxim, same image unlimited B-to-B use for one year. Payment in full due now. Either we can invoice them and forward to you, or, preferably, you can invoice them and pay me. But either way.

Agreement also allows purchase of future images at \$500 each for unlimited B-to-B use for one year.

Let me know if you have questions.

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

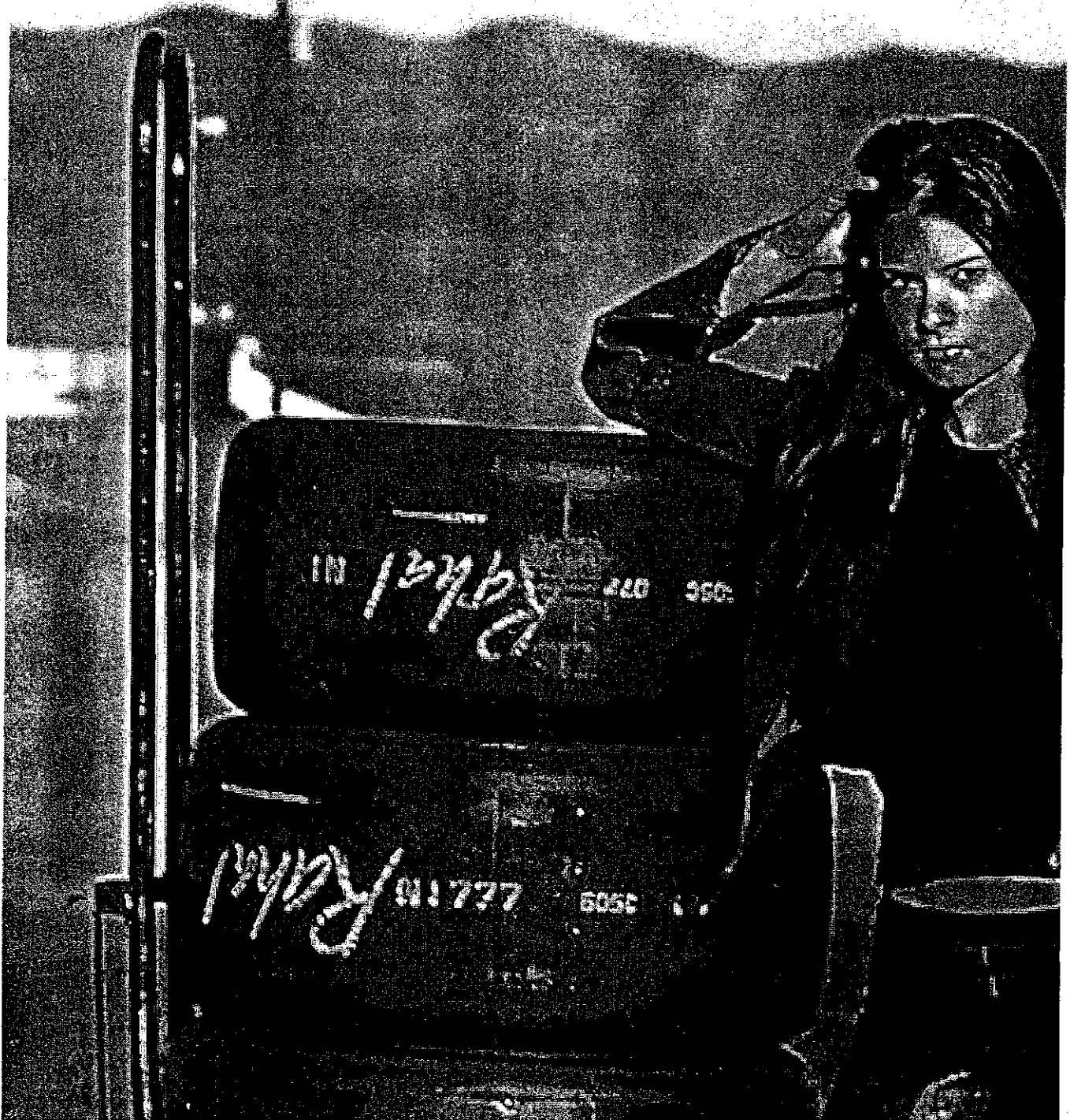
<http://www.mccainphoto.com>

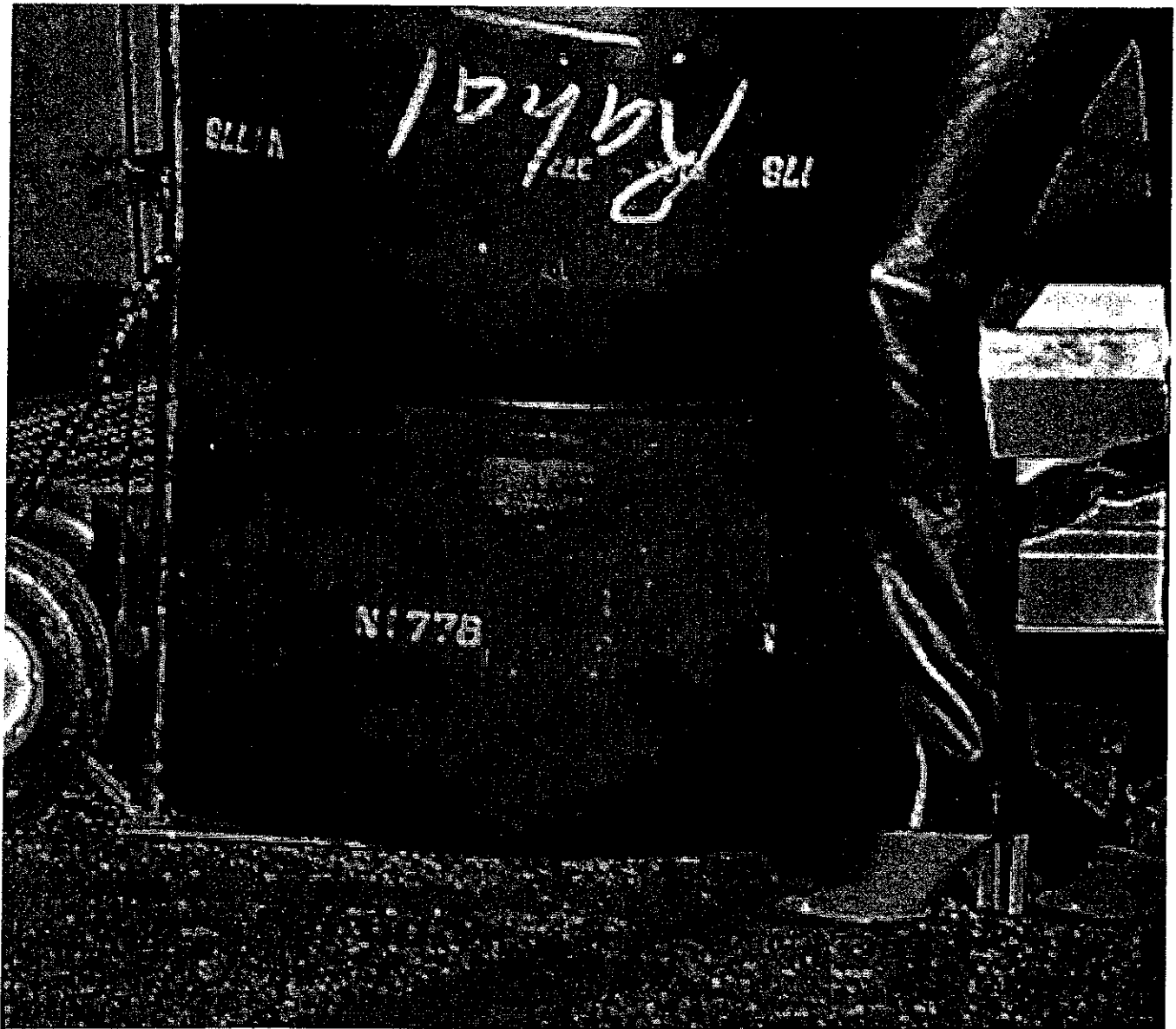
Stock:

<http://www.photosofarizona.com>

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Edward McCain

Mon, Jan 29, 2007 11:40 AM

Subject: Re: Urgent Danica photo
Date: Friday, January 21, 2005 11:24 AM
From: Mark Borchetta <mark@borchetta.com>
To: Edward McCain <edward@mccainphoto.com>
Cc: Brian Girecky <brian@borchetta.com>
Conversation: Urgent Danica photo

Brian, please advise Ed on whom to bill at Argent and what address.

--
Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: Edward McCain <edward@mccainphoto.com>
Date: Fri, 21 Jan 2005 11:15:47 -0700
To: Mark Borchetta <mark@borchetta.com>
Subject: Re: Urgent Danica photo

Mark,

Okay, DP solo 13. Can I get a name and address to send the invoice to at Argent?

Thanks,

Edward

On 1/21/05 11:10 AM, "Mark Borchetta" <mark@borchetta.com> wrote:

Yeah, it's "DP solo 13."

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: Edward McCain <edward@mccainphoto.com>
Date: Fri, 21 Jan 2005 10:46:54 -0700
To: Mark Borchetta <mark@borchetta.com>
Subject: Re: Urgent Danica photo

Mark,

Is there any image number or other way to identify the photo they are going to use?

I can invoice them for the full \$6500 and then pay you the difference between that and the \$5970 for my fee. Can you give me the name and address at Argent to invoice on this?

I will include the option for Argent to purchase future images at \$500 each for Business to business use for one year.

Thanks,

Edward

On 1/20/05 10:14 PM, "Mark Borchetta" <mark@borchetta.com> wrote:

Sorry for the delay Ed.

\$6,500 for the use of one image for one insertion in SI and Maxim, same image unlimited B-to-B use for one year. Payment in full due now. Either we can invoice them and forward to you, or, preferably, you can invoice them and pay me. But either way.

Agreement also allows purchase of future images at \$500 each for unlimited B-to-B use for one year.

Let me know if you have questions.

Edward McCain
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Voice: (520) 623-1998 Fax: (520) 623-1190
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Edward McCain

Mon, Jan 29, 2007 11:40 AM

Subject: Invoicing

Date: Friday, January 21, 2005 3:29 PM

From: Brian Girecky <brian@borchetta.com>

To: <edward@mccainphoto.com>

Conversation: Invoicing

Ed,

Make your invoice out to Argent Mortgage and forward to:

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614

Let me know if you encounter any problems.

Thanks,

Brian

Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:44 AM

Subject: Invoicing

Date: Monday, January 24, 2005 10:03 AM

From: Brian Girecky <brian@borchetta.com>

To: <edward@mccainphoto.com>

Conversation: Invoicing

Ed,

I just heard back from Rochelle. If you haven't sent the invoice yet, send it to:

Hope Margarit
3 Park Plaza
Irvine, CA 92614

Instead of:

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614

If you have already sent it, there shouldn't be a problem, but let me know if you do encounter any problems.

Thanks,

Brian

Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:44 AM

Subject: Re: Invoicing

Date: Monday, January 24, 2005 10:45 AM

From: Brian Girecky <brian@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Invoicing

I don't anticipate that it will be a problem....

I'll email Rochelle and let her know that you sent it to her.

On 1/24/05 9:43 AM, "Edward McCain" <edward@mccainphoto.com> wrote:

> Brian,

>

> I already sent it to Rochelle. Perhaps she can forward it to Hope. If I need
> to re-send the invoice to Hope, let me know.

>

> Edward

>

> On 1/24/05 10:03 AM, "Brian Girecky" <brian@borchetta.com> wrote:

>

>> Ed,

>>

>>

>> I just heard back from Rochelle. If you haven't sent the invoice yet, send
>> it to:

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>> Hope Margarit

>> 3 Park Plaza

>> Irvine, CA 92614

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>> Rochelle Arther

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>> (800) 561-4072 Ext. 84175

>> Fax (800) 551-2614

>>

>>

>>

>> If you have already sent it, there shouldn't be a problem, but let me know
>> if you do encounter any problems.

>>

>>

>> Thanks,

>>

>> Brian

>>

>> Production Coordinator

>> The Creative Department

>> Borchetta Marketing Group

>> 15260 Ventura Blvd.

>> Suite 840

>> Sherman Oaks, CA 91403
>> P 818.990.3239
>> F 818.990.6079
>> E Brian@borchetta.com

>>

>>

>

> *****

> Edward McCain

> Assignment & Stock Photography

> Voice: (520) 623-1998 Fax: (520) 623-1190

> mailto:edward@mccainphoto.com

> Assignments:

> http://www.mccainphoto.com

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> "Life is an affirmative action program"

> *****

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Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:45 AM

Subject: Re: Invoicing

Date: Monday, January 24, 2005 10:56 AM

From: Brian Girecky <brian@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Invoicing

Ed,

Rochelle said her attention will be fine.

Brian

On 1/24/05 9:49 AM, "Edward McCain" <edward@mccainphoto.com> wrote:

> Brian,

>

> Okay, Thanks.

>

> Edward

>

> On 1/24/05 10:45 AM, "Brian Girecky" <brian@borchetta.com> wrote:

>

>> I don't anticipate that it will be a problem....

>>

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>>> Edward

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>>>> Hope Margarit

>>>> 3 Park Plaza

>>>> Irvine, CA 92614

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>>>> Instead of:

>>>>

>>>> Rochelle Arther

>>>> Advertising Coordinator, Marketing

>>>> Argent Mortgage

>>>> 3 Park Plaza

>>>> Irvine, CA 92614

>>>> (800) 561-4072 Ext. 84175

>>>> Fax (800) 551-2614

>>>>
>>>>
>>>>
>>>> If you have already sent it, there shouldn't be a problem, but let me know
>>>> if you do encounter any problems.
>>>>
>>>>
>>>> Thanks,
>>>>
>>>> Brian
>>>>
>>>> Production Coordinator
>>>> The Creative Department
>>>> Borchetta Marketing Group
>>>> 15260 Ventura Blvd.
>>>> Suite 840
>>>> Sherman Oaks, CA 91403
>>>> P 818.990.3239
>>>> F 818.990.6079
>>>> E Brian@borchetta.com
>>>>
>>>>
>>> *****
>>> Edward McCain
>>> Assignment & Stock Photography
>>> Voice: (520) 623-1998 Fax: (520) 623-1190
>>> mailto:edward@mccainphoto.com
>>> Assignments:
>>> http://www.mccainphoto.com
>>> Stock:
>>> http://www.photosofarizona.com
>>> "Life is an affirmative action program"
>>> *****
>>>
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>>> this e-mail promptly.
>>>
>>>
>>
>> Production Coordinator
>> The Creative Department
>> Borchetta Marketing Group
>> 15260 Ventura Blvd.
>> Suite 840
>> Sherman Oaks, CA 91403
>> P 818.990.3239
>> F 818.990.6079
>> E Brian@borchetta.com
>>
>>
>
> *****
> Edward McCain
> Assignment & Stock Photography
> Voice: (520) 623-1998 Fax: (520) 623-1190

> mailto:edward@mccainphoto.com
> Assignments:
> http://www.mccainphoto.com
> Stock:
> http:www.photosofarizona.com
> "Life is an affirmative action program"
> *****
>
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>

Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:45 AM

Subject: Re: Photo Library and Contract
Date: Wednesday, January 26, 2005 1:24 PM
From: Mark Borchetta <mark@borchetta.com>
To: <RARther@argementmortgage.com>, Brian Girecky <brian@borchetta.com>
Cc: <HMargarit@argementmortgage.com>
Conversation: Photo Library and Contract

Rochelle,

I'm presuming you haven't received the photographer's contract in the mail yet. I've attached an electronic version here.

As you can see, he is located in Tucson.

Brian, how many street clothes setups are there?

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

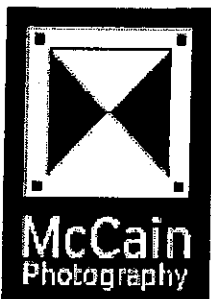
From: <RARther@argementmortgage.com>
Date: Wed, 26 Jan 2005 11:33:51 -0800
To: Brian Girecky <brian@borchetta.com>
Cc: <HMargarit@argementmortgage.com>, Mark Borchetta <mark@borchetta.com>
Subject: Re: Photo Library and Contract

Brian

Hope and I would actually like to meet with the photographer. Is he in the LA? If he is Hope and I would like to set up a time that we come up and have a brief meeting with him. In response to your comment about posting all of the photos we actually only want photos of Danica out of her gear and not near her car.

Thank you

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614



Photography Invoice

TO: Rochelle Arther
Argent Mortgage Company LLC
3 Park Plaza
Irvine, CA 92614

(800) 561-4072

Date: 1/21/0
Invoice No.: 4343
Job N°: 2995
Client Job N°:
P.O. N°:
AD/Editor: M. Barc

Start Time: 3:30 PM

Start Date: 11/20/02

Due Date: 1/21/0

Details: Location photography of Danica Patrick Stock #DP solo 13.

Location: Firebird Raceway

Rights/Usages:

Print advertising usage of subject image "DP solo 13" as follows:

- One insertion in Sports Illustrated Magazine, up to one page in size, inside page position only.
- One insertion in Maxim Magazine, up to one page in size, inside page position only.

Subject photography © 2002 Edward McCain/McCain Photography. All rights are reserved except those specifically granted by this agreement.

Upon payment in full of this invoice, additional images from this photography session will be available to Argent Mortgage for Argent Mortgage Business-to-Business advertising usage for a period of one year for \$500 per image.

[illegible]

Payment is due upon receipt. Granting of right of usage is limited to that specified above and is contingent upon full payment and is subject to all terms and conditions

Itemized Costs: \$6

Exhibit H Page 133 Page 3 of 4

on the reverse side pursuant to article 2, Uniform Commercial Code and the 1976 Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photographs resulting from this assignment. Additional usage requires negotiation of additional fees.

18X:
Total: \$6
Deposit/Credit:
Balance Due: \$6.

Page 1 of 1

EIN:86-08

McCain Photography, 211 S. Fourth Avenue, Tucson, AZ 85701-2103
(520) 623-1998 Fax: (520) 623-1190 edward@mccainphoto.com / www.mccainphoto.

Edward McCain

Mon, Jan 29, 2007 11:48 AM

Subject: Re: Image posted

Date: Wednesday, January 26, 2005 2:05 PM

From: Mark Borchetta <mark@borchetta.com>

To: "Tuttle, Jennifer" <jtuttle@indyracing.com>

Cc: Edward McCain <edward@mccainphoto.com>

Conversation: Image posted

Hello Jennifer,

I wanted to introduce myself - I art directed the photo shoot from where that Danica image came. I also am responsible for bringing Argent into the world of racing. My ad agency handled all of their marketing at the time and I convinced them of all the great advantages of racing sponsorships - which obviously has paid off in spades! I have an extensive background in racing.

I am currently doing some pretty cool events at and around IRL races - I usually work with Kent Liffick and the speedways directly. Also my brother has provided a few performers for the Indy 500 over the past few years (he heads up Universal Music Group's country division).

Anyway, all that aside, when I saw your title, I wanted to introduce myself in case there ever seems to be an opportunity to work together.

Also, if you could, I would love to let my photographer know when and where the ad w/Danica will appear.

Thanks so much, take care.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

> From: "Tuttle, Jennifer" <jtuttle@indyracing.com>
> Date: Thu, 20 Jan 2005 08:54:13 -0500
> To: Mark Borchetta <mark@borchetta.com>, <HMargarite@argentmortgage.com>,
> <RArther@argentmortgage.com>
> Cc: "Haffner, Amos" <ahaffner@indyracing.com>, Brian Girecky
> <brian@borchetta.com>
> Subject: RE: Image posted
>
> Thanks everyone for all your efforts! This is an image we've been
> trying to get for 3 weeks now!
>
> Jennifer E. Tuttle
> Senior Manager, Strategic Alliances
> Indy Racing League
> 4565 West 16th Street
> Indianapolis, IN 46222

> 317.492.6557 direct
> 317.492.8730 fax
> 317.418.1875 cell
> jtuttle@indyracing.com
> www.indyracing.com/partnerships
>
>
> -----Original Message-----
> From: Mark Borchetta [mailto:mark@borchetta.com]
> Sent: Thursday, January 20, 2005 2:24 AM
> To: HMargarit@argementmortgage.com; RArther@argementmortgage.com
> Cc: Haffner, Amos; Tuttle, Jennifer; Brian Girecky
> Subject: Image posted
>
> The Danica image was posted about 9:30 pm. I downloaded it from the
> site to ensure there were no issues.
>
> Please contact asap if you so run into any problems.
>
>
> --
> Mark Borchetta
> Borchetta Marketing Group
> 15260 Ventura Blvd
> Suite 840
> Sherman Oaks, CA 91403
> Phone 818/990-3239
> Fax 818/990-6079
> mark@borchetta.com
>
>
>

Edward McCain

Mon, Jan 29, 2007 11:48 AM

Subject: Last email

Date: Wednesday, January 26, 2005 2:08 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Last email

Hey Ed,

I hadn't meant to cc you on that. It started out to be just a request for the ad issues, then I saw her title and added everything else and forgot to pull your name from the sendees...

See ya.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:49 AM

Subject: FW: Photographer Invoice
Date: Thursday, February 3, 2005 10:02 AM
From: Brian Girecky <brian@borchetta.com>
To: Edward McCain <edward@mccainphoto.com>
Conversation: Photographer Invoice

Ed,

Do you have the signed estimate/contract copy that they are looking for readily accessible? We can find ours, but we will have to pull it out of storage If you can find yours easily please let me know. We are not sure why Argent does not have their copy.

Thanks,

Brian
Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

----- Forwarded Message

From: HMargarit@argentmortgage.com
Date: Wed, 2 Feb 2005 18:29:11 -0800
To: Brian Girecky <brian@borchetta.com>
Cc: RArther@argentmortgage.com
Subject: Re: Photographer Invoice

This is great, but I was looking for the contract or estimate we signed.

Thanks

Hope Margarit
Argent Mortgage
Marketing Manager, Advertising
P:800.561.4072 Ext.84249
C:714.504.8396
F:866.551.2614

Brian Girecky <brian@borchetta.com> 02/01/2005 09:28 AM

To: <HMargarit@argentmortgage.com>
cc:
Subject: Photographer Invoice

Hope,

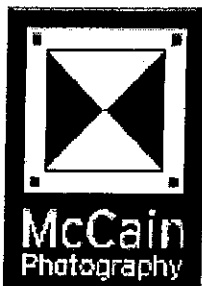
Here is an electronic version of the original contract. Let me know if this suits your needs.

Thanks,

Brian
Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

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----- End of Forwarded Message



Photography Invoice

TO: Mark Borchetta
Borchetta, Wentworth & Associates
26403 Emerald Dove Drive
Van Nuys, CA 91411
USA
(818) 890-3238

Date: 11/18/02
Invoice No.: 4172
Job No.: 2993
Client Job No.: AMC-02-07
P.O. No.:
AD/Editor: Mark Borchetta

Start Time: 3:30 PM

Start Date: 11/20/02

Due Date: 11/18/02

Details: DANICA PATRICK RACER: • Location/studio still photography of driver Danica Patrick, full-length with CAH1 racer at sunset on 1 mile track. NOTE: If CAH1 racer not available for studio we will photograph CART racer on track location, on small white seamless if weather and location permit. • Location still photography of driver Danica Patrick in various poses around track/pit area. • Location still photography of driver Danica Patrick in CART racer from over-the-shoulder perspective. • Location still photography of driver Danica Patrick in CART racer from various angles around track. • Location still photography of driver Danica Patrick in CART race

Location: Elgin Raceway

Rights/Usages:

Exclusive usage of subject images for a period of one year as follows: • 1. Trade display advertisements for three monthly trade magazines and one bi-monthly magazine for a period of one year with circulation of all magazines totaling 100,000 or less. • 2. Business to Business direct-mail advertisement for a total of 12 insertions of postcard, one-page calendar sheets or key chain usage for a period of one year with a circulation of 20,000 or less per month. • 3. Trade show advertisements for a total of 6 trade shows a year, including pop-up and trade show displays units for a period of one year.

Subject photography © 2002 Edward McCain/McCain Photography. All rights are reserved except those specifically granted by this agreement.

Itemized Photography Expenses		Qty:	Cost:	Ext. Cost
2	Additional Usage Fee for media usage described above	1	\$1,000.	\$1,000
1	Photography Fee	1	\$2,000.	\$2,000
3	Photography First Assistant	2	\$200.00	\$400
4	Assistant's truck for grip pickup/return & canopy rental	1	\$125.00	\$125
5	Photography Second Assistant	1	\$200.00	\$200
6	Rental from Reel-Men Productions (20x20 silk & stands, etc.)	1	\$474.56	\$474
7	Minivan Rental	1	\$144.23	\$144
8	Rental equipment from PHOTOMARK	1	\$75.67	\$75
9	Superwhite background paper	1	\$208.36	\$208
10	Polaroid PRO 100 B&W film (Type 664)	10	\$4.00	\$40
11	Professional color transparency film & processing	50	\$25.00	\$1,250
12	Stylist, hair & makeup	1	\$500.00	\$500
13	Meals & Lodging (see attached expense log for detail)	1	\$259.65	\$259

Payment is due upon receipt. Granting of right of usage is subject to that specified above and is contingent upon full payment and is subject to all terms and conditions on the reverse side pursuant to article 2. Uniform Commercial Code and the 1976

Itemized Costs: \$6,873

Tax: \$0

Exhibit H Page 4 Page 3 of 4

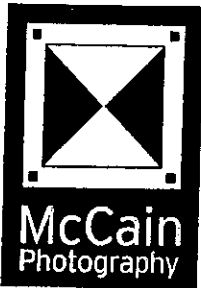
Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photographs resulting from this assignment. Additional usage requires negotiation of additional fees.

Total: \$6,577
Deposit/Credit: \$9,000
Balance Due: \$2,423

Page 1 of 1

EIN:86-08004

McCain Photography, 211 S. Fourth Avenue, Tucson, AZ 85701-2103
(520) 623-1998 Fax: (520) 623-1190 edward@mccainphoto.com / www.mccainphoto.com



Photography Invoice

TO: Mark Borchetta
 Borchetta, Wentworth & Associates
 26403 Emerald Dove Drive
 Valencia, CA 91355
 USA
 (818) 990-3239

Date: 11/18/02
 Invoice No.: 4172
 Job N°: 2995
 Client Job N°: AMC-02-07
 P.O. N°:
 AD/Editor: Mark Borchetta

Start Time: 3:30 PM

Start Date: 11/20/02

Due Date: 11/19/02

Details: DANICA PATRICK RACER: • Location/studio still photography of driver Danica Patrick, full-length with CART racer at sunset on Firebird track. NOTE: If CART racer not available for studio, we will photograph CART racer on track location, on small white seamless if weather and location permit. • Location still photography of driver Danica Patrick in various poses around track/pit area. • Location still photography of driver Danica Patrick in CART racer from over-the-shoulder perspective. • Location still photography of driver Danica Patrick in CART racer from various angles around track. • Location still photography of driver Danica Patrick in CART racer

Location: Firebird Raceway

Rights/Usages:

Exclusive usage of subject images for a period of one year as follows: • 1. Trade display advertisements for three monthly trade magazines and one bi-monthly magazine for a period of one year with circulation of all magazines totaling 100,000 or less. • 2. Business to Business direct-mail advertisement for a total of 12 insertions of postcard, one-page calendar sheets or key chain usage for a period of one year with a circulation of 20,000 or less per month. • 3. Trade show advertisements for a total of 6 trade shows a year, including pop-ups and trade show displays units for a period of one year.

Subject photography © 2002 Edward McCain/McCain Photography. All rights are reserved except those specifically granted by this agreement.

Itemized Photography Expenses		Qty:	Cost:	Ext. Cost:
2	Additional Usage Fee for media usage described above	1	\$1,000.	\$1,000.00
1	Photography Fee	1	\$2,000.	\$2,000.00
3	Photography First Assistant	2	\$200.00	\$400.00
4	Assistant's truck for grip pickup/return & canopy rental	1	\$125.00	\$125.00
5	Photography Second Assistant	1	\$200.00	\$200.00
6	Rental from Reel-Men Productions (20x20 silk & stands, etc.)	1	\$474.56	\$474.56
7	Minivan Rental	1	\$144.23	\$144.23
8	Rental equipment from PHOTOMARK	1	\$75.67	\$75.67
9	Superwhite background paper	1	\$208.36	\$208.36
10	Polapan PRO 100 B&W film (Type 664)	10	\$4.00	\$40.00
11	Professional color transparency film & processing	50	\$25.00	\$1,250.00
12	Stylist, hair & makeup	1	\$500.00	\$500.00
13	Meals & Lodging (see attached expense log for detail)	1	\$259.65	\$259.65

Payment is due upon receipt. Granting of right of usage is limited to that specified above and is contingent upon full payment and is subject to all terms and conditions on the reverse side pursuant to article 2, Uniform Commercial Code and the 1976 Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photographs resulting from this assignment. Additional usage requires negotiation of additional fees.

Itemized Costs: \$6,677.47
 Tax: \$0.00
 Total: \$6,677.47
 Deposit/Credit: \$3,000.00
 Balance Due: \$3,677.47

Edward McCain

Mon, Jan 29, 2007 11:50 AM

Subject: Re: Photo Library and Contract

Date: Monday, February 7, 2005 2:13 PM

From: Brian Girecky <brian@borchetta.com>

To: <RArther@argentmortgage.com>, <HMargarit@argentmortgage.com>

Cc: Mark Borchetta <mark@borchetta.com>

Conversation: Photo Library and Contract

Rochelle,

We will be happy to have the images to you ASAP (By Friday) but we cannot have payment withheld contingent on that. Per Hope's email (attached) the budget for this image was approved. She did not want to wait for the other images as Mark offered to her at that time. The photographer will not agree to have payment withheld any longer. If we can not get a check issued by Wednesday, the photographer as advised us to have the image pulled (he was reticent on having the image released without payment in advance, but we told him that we have dealt with Argent in good faith for several years without a problem, and we did not anticipate a problem with this transaction).

Brian
Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

On 2/7/05 12:59 PM, "RArther@argentmortgage.com"
<RArther@argentmortgage.com> wrote:

Brian

Can you please scan one image of each of the eight setups and email over in a low res eps file? We will make a choice on what setups work best from there. I will need these ASAP.

Edward McCain

Mon, Jan 29, 2007 11:54 AM

Subject: Re: Edward McCain Nominated for Arizona Arts Award

Date: Monday, May 2, 2005 2:40 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Edward McCain Nominated for Arizona Arts Award

Sure. Take note of Danica this month.... She's going to be huge at Indy~

--

Mark Borchetta

From: Edward McCain <edward@mccainphoto.com>

Date: Mon, 02 May 2005 14:38:41 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Re: Edward McCain Nominated for Arizona Arts Award

Thanks and best regards, Mark

On 5/2/05 8:10 AM, "Mark Borchetta" <mark@borchetta.com> wrote:

Good luck Ed!

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

<http://www.mccainphoto.com>

Stock:

<http://www.photosofarizona.com>

"Life is an affirmative action program"

The information included in this e-mail, and it's attachments, may be

Exhibit H Page 145 Page 1 of 2